

A Motion of Censure.

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The Railway Muddle Again.

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Ministerial Crisis.

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The Attorney-General Resigns.

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The debate on the motion proposed by Mr. Lewis [in the House of Assembly], - "That the action of four members of the Government in promising to give the Van Diemen's Land Co. the right to construct a branch of the Waratah and Zeehan Railway to Mount Lyell, the concealment of such promise from Parliament, and the connection of the Right Honourable the Premier with the attempted flotation of the undertaking in England, deserve the condemnation of this House." was returned.

Mr. Smith said that on looking over the records, he found that in 1891 there were two measures passed, one for a railway from somewhere in the Derwent Valley to Zeehan, and the other from Waratah to Zeehan. The Southern scheme lapsed, but some £35,000 was spent on the Northern one, £5,000 of which was afterwards returned, leaving a net expenditure of £30,000, which could be utilised by the successors of that company. When the present Emu Bay Co. made their application to go to Mount Lyell there was no other company in the field, and the Cabinet as a whole endorsed the promise that that application should be granted. This was borne out by the fact that the Attorney-General pointed out that a provisional lease could be granted.

The Attorney-General: No.

Mr. Smith said he accepted the Attorney-General's explanation, but he would be glad to hear him explain why he placed no record on the minute his colleague signed of his views. That gentlemen had made no word of protest, or none had reached the public, until a deputation waited on his colleagues and was sought to be repulsed by the Treasurer. He thought the Attorney-General was in the same position as Mr. Issacs, the Attorney-General of Victoria, who, when he objected to prosecution in the Mercantile Bank cases, resigned his office, and threw on his colleagues the responsibility of the action which the whole of the Cabinet had decided upon. He contended that the Great Western Railway Co. had never shown any intention of going to Mount Lyell. They were told by the Attorney-General that the extension of the Emu Bay line to Lyell would not be making a branch line; but the Attorney-General was not an authority on railway matters; a more expert authority than he would have to decide that question. There was no room for saying that Ministers should have made known their promise to the Emu Bay Co. to the promoters of the Great Western Railway. Those promoters should have guarded their own interests, and the Government was responsible for not instructing them. The motion before the House was undoubtedly a party one and emanated from a fragment of the fragmentary party opposite.

Mr. Dobson: What a wonderful revelation. (Laughter.)

Mr. Smith: Mr. Dobson had mentioned that Mr. Gladstone did not allow his Ministers to take part in the promotion of companies, but Mr. Gladstone read to service on Sundays at Hawarden Church, and the people of Tasmania would have been surprised if Mr. Dobson in his imitation of the Grand Old Man had ever attempted the same thing.

(Laughter.) Mr. Dobson had characterised the *Premier's* actions as inconsistent, but if the Premier, whilst in London, had helped forward a scheme which would bring capital into the colony, he had done right. Mr. Dobson was one of the legal advisers of the Great Western Co. and therefore his attitude on this question could not be separated from a certain amount of suspicion. Mr. Dobson had reflected severely upon Mr. Norton-Smith, and esteemed old member of the House, but Mr. Dobson's remark that Mr. Norton-Smith had endeavoured to trap the Government recoiled upon himself, upon one who took advantage of his position in Parliament to make statements which were wholly devoid of foundation. [The Premier: Hear, hear.] The Great Western Railway Co. was not yet registered; it was as yet merely a syndicate. They promised to become a company in the "sweet by and by" -

Mr. Crisp: They have complied with the conditions.

Mr. Smith: To go on to prospect for loot.

Mr. Dobson: They have deposited £12,500.

Mr. Smith: Not towards building the line but to prospect for minerals.

Mr. Hall: And they have received over 480,000 acres of land.

Mr. Smith held that the country was much too small for the two rival companies. The Emu Bay Co. had spent £30,000 already, were employing men, and practically making a railway; but as far as he knew the Great Western syndicate had not yet made a thoroughly efficient survey. He and others would support the Ministry if they insisted on a direct vote on the motion, and would not accept any amendment. If the Government had done wrong, or had committed an error of judgment, and were put out over it, the colony would be still responsible for their action. The Premier had pledged the colony, and the pledge should be observed. The motion had the effect of joining those who said they would never come together again. He did not think that there was any desire to make a difference between the North and South, but as a Northern man he objected to a scheme by which the whole of the traffic from Mount Lyell would be brought to Hobart. He admitted the absolute necessity of something of the kind, but he denied the justice of it.

Mr. Humphrey Page said there had been no satisfactory answer made to the question of granting the concession improperly and without the consent and knowledge of Parliament. They had heard nothing from the Premier or Minister of Lands to say that the Attorney-General was ever consulted on the subject. The matter had been pushed through with unusual haste. The Treasurer, in reply to a deputation, had said that four days elapsed between the receipt of a letter from the Emu Bay Co. and the Minister's memorandum thereon. Considering all things, it was impossible to resist the conclusion that the theory of it being a matter of notoriety was an after thought. The Minister of Lands had said that the reason that the correspondence was not communicated to the Select Committee that was sitting was that it had never occurred to him as being at all necessary to communicate to the committee sitting on a different matter details regarding a foreign project. The Premier himself, in speaking on the motion of Mr. Mulcahy, said he had had no desire to conceal what had taken place, but that it was one of many executive matters, and it had never occurred to him as being necessary or of such importance to bring it before the House. No explanation was given at all that the Minister did not make the statement, because everyone was aware of it. The Minister of Lands had said in reply to a question - "Had it occurred to the committee to ask for

details on the question I should have given them.” Why was this information not given voluntarily? With regard to the question of a monopoly, it was denied that the Great Western Co. had any monopoly. Whatever might be the fact of that it was certain that that company entered upon their undertaking under the distinct impression that no concession had been given to any other company to make a line to Mount Lyell. It was doubtful if they would have entered upon the undertaking had they known of the concession that had been made. The company was certainly entitled to know everything that bore upon the subject. The Premier had said that it would be a stumbling block against the interests of the Great Western. If that meant that it would have made the promoters withdraw from their undertaking, it was certain they had a right to know it, and Parliament should also have known it. The people of Hobart should take great interest in the question because it affected the trade and commerce of the capital. The promoters of the Great Western Railway Co. had been deprived of information which they had a right to, and they were taken by surprise on learning of the concession that had been given. It was impossible to avoid the conclusion that the action of Ministers in that matter would lead to an amount of distrust and insecurity in all capitalists seeking to invest their money in the colony. Mr. Smith had entered into a defence of the Premier in a matter which, as far as he was aware, needed no defence. The Premier had assured them the previous night that whatever he had done in England he had done without receiving any fees or without being one shilling the better for it. He took it that no member of the House would hesitate to accept that statement in the fullest degree. Nevertheless, he thought that, considering the imperative duty which lay upon Ministers to make that disclosure to Parliament, the motion had not been brought forward without proper justification, and the conduct of Ministers was deserving of censure.

Captain Miles said that the motion was one which should be considered seriously by hon. members, because, if carried, it involved the resignation of Ministers. That might be regarded as a matter of small importance by some hon. members; by others, expecting to fill the vacant places, probably an advantage, but by those who had the welfare of the country at heart it would be regarded as a great mistake to do anything which would, at the present time, throw Ministers from their seats. He did not think that Ministers were heaven-born, but the colony was in a transition stage, and it was an error to swap horses in crossing the stream. The Government had not done anything to deserve the vote of want of confidence. He was not going to travel over all the ground which had been gone over the previous night by Mr. Dobson. He would not delve in ancient history in order to hurl a brick at Ministers, but he wanted to deal with the matter they had before them at the present moment. His duty was not to any railway company specially, but to the colony as a whole, and he was not going to consider it from a Northern or a Southern standpoint, but as a representative of Tasmania. Whatever statutory rights had been granted should be maintained. Three charges had been made against Ministers but one charge, that the Premier deserved condemnation for his connection with regard to the attempted flotation of the Emu Bay Co. in England, he dismissed at once from his mind. The Premier or any other member of Parliament, had a perfect right to do as he pleased, to associate himself with any company he liked, so long as no corrupt motive was shown. Had any corrupt motive been shown? Until corrupt motive was shown he was not going to impute one.

Mr. Humphrey Page: None has been alleged.

Captain Miles: Did the motion not allege corrupt motives; otherwise, why was it there at all? Then, as to the other question, that the promising to give the V.D.L. Co. the right to construct a branch of the Waratah-Zeehan line to Mount Lyell. He was in conflict with the hon. member from Devonport and the Attorney-General when they thought the proposed line from Rosebery to Lyell was not a branch line, as he believed that Ministers had a perfect right to grant it. What was a branch railway? Mr. Henry had taken illustrations from the Old Country, but he should have taken his examples from this colony, as the conditions were altogether different, the object here being to open up country and bring population to the land. They had a Main Line Railway between Hobart and Launceston, and there was a branch called the Derwent Valley Line. Suppose it was extended 10 miles it would still be a branch, or 50 miles, even although extended further than the length of the trunk line. If the original Western line had been extended to Ross the extension would have been a branch line, but the moment they got through to Hobart, and brought the traffic through from this end and crossed to feed to trunk, but took the traffic away, it ceased to be a branch line and became a trunk line. As to the Emu Bay Co., if they constructed their trunk line only to Rosebery, and extended from there on to Lyell, then he thought it would not be a branch line. But he thought that if the line was constructed as had been proposed it would be a branch line, and there was power in the Act, he believed, to construct it.

Mr. Henry: The plan and speculation issued by the Emu Bay Co. shows that their line extends to Lyell.

Captain Miles said he was not dealing with the prospectus. In his opinion the prospectus was a bogus one, and it had no right to be issued as it was misleading, and obtaining shareholder's money under false pretences. But he did not want to touch the prospectus at all because that was not the question they were dealing with. He did not think Ministers understood the question, and he would like them to pay attention to a phase of the matter that he was going to put before them. It seemed to him that if they allowed any railway system between Rosebery and Mount Lyell, their West Coast railways, that had cost the colony such an immense sum of money, would be failures.

Mr. Henry: Hear, hear.

Captain Miles said that when the Emu Bay Co. went to London they could not float their company. They came out to the colony again, and joined with the Mount Lyell directors, and between them they floated the company. Those who knew the Mount Lyell directors know they were not men who chased shadows. They went after the substance, and generally managed to get it. Now the Mt. Lyell Co. had a railway of its own, and there must be some reason why it had joined with the Emu Bay Co. What was the reason? If Ministers had asked themselves the question they would probably be more keen to prevent the construction of a branch line from Rosebery to Mt. Lyell than they appeared to be. They all knew that the largest and most complete ore reduction plant in the Southern Hemisphere was at Mt. Lyell. It was now being duplicated, and in the course of a short time would be capable of treating an immense amount of ore. Those who had been to Mt. Lyell knew that at present 200 or 300 men were kept procuring fluxes, limestone and silica, and there was a special line, of two feet gauge, to convey those fluxes to the mine. They also knew that the Colebrook, Hercules, and Rosebery districts contained ores that could be used in fluxing Mount Lyell ores, and it seemed apparent to him that if they got this concession the whole of the ores from the Colebrook

and Rosebery districts would be carried by this Emu Bay Co.'s line to Mount Lyell, where it would be reduced. It would then be carried by the Mount Lyell Co.' line to Strahan. Thus they would completely cut rings round the Government railways, which would not get an ounce of stuff. (Hear, hear.) Instead of going to Zeehan to be smelted, it was going to Mount Lyell, and all the cake and coal was to be carried on the Mount Lyell Co.'s railway, which would also take the passenger traffic. It was a shorter distance from Rosebery to Strahan, *via* Mount Lyell than *via* Zeehan. Here they were putting a competing line against a line that had cost the colony £300,000. (Hear, hear.) If they had given the right, the sooner they get it back the better. They must pay for it. He went as far to say that they should not allow any company at all to go there, and if they had given the right, they must try and buy it back as soon as possible. He did not think the Great Western Railway Co. had any greater right than the Emu Bay Co. There was this difference, however, that the Mount Lyell people were not working with the Great Western Co., and the latter would therefore have to pay to go over the line from Strahan to Mount Lyell, and would not be so dangerous as the other competing company to the Government lines. He did not think Ministers had done wrong in granting the concession. The fault he found was that the Government had acted in haste and without due consideration, and without consulting the legal member of the Cabinet, the man whom above everyone else they ought to consult. On the question of concealment he had very little to say. It would have saved a lot of trouble if Ministers had informed the House that this concession had been given, but he did not regard it as a crime. He considered that they gave away concessions far too freely. Whatever might be the result of the motion, he intended as soon as practicable to introduce a motion which he hoped would have the effect of preventing branch lines being constructed in the future until the plans were on the table of the House and the House had an opportunity of seeing whether they competed with the Government lines. Having regard to the fact that it would be injurious at the present time to force the Ministry to resign, he intended to move an amendment to the motion before the House, which he understood Ministers would regard as a friendly solution of the difficulty. The amendment respected the promise that had been made by Ministers, which they had made, he believed, in all good faith, and considered they were bound in honour to carry out. But it could only be justified if it was in conformity with the law, and the Attorney-General did not think so. Ministers could only be held to carry out the promise as far as it was legal. If it was not legal they could not carry it out, but so far as they were within the law they should keep their promise. This amendment did not take away from the Ministry any power it enjoyed at present, and it left the two rival companies in precisely the same position. He hoped it would be accepted by hon. members as a solution of the difficulty. It was to prevent anything being done until the Crown law officers had advised that it was in conformity with the law. The amendment was,

“That in the opinion of this House it is desirable that Ministers should take no further step in respect of their promise to grant to the Emu Bay Railway Co. a lease for a branch line to Mount Lyell until they have assured themselves by the law officers of the Crown that such an action is in conformity with the law.”

Mr. M.J. Clarke: That is to give it all to the Great Western Co.

Captain Miles: I maintain that this amendment does not put either the Great Western or the Emu Bay Co. in a better position than it is in now.

Mr. M.J. Clarke: Take the opinion of the Supreme Court.

Captain Miles said that no doubt the hon. member liked to see things go to the Supreme Court, that was his business. For himself, he was rather afraid of the Supreme Court; he had reason to be afraid of it. The amendment did not affect the position of either of the companies; it simply said the matter was to be held in abeyance until Ministers assured themselves that the position they took up was in conformity with the law. He was sure Ministers required to do that. If they stood on solid ground, and were satisfied that their action was legal, all the talk in the world would not alter it, and the House could not alter it. (Hear, hear.)

The Premier [Edward Braddon] said he thought he ought to rise at this earliest opportunity and say that whilst he appreciated the kindly motive of the hon. member for Glamorgan in moving such an amendment, Ministers felt that it was not desirable that they should escape from this debate by any side motion of that work, and should meet the issue direct. (Ministerial cheers.)

The Attorney-General (Hon. A.I. Clark), who was received with loud cheers, said the Premier had left him no other alternative than to rise and immediately address the House to explain the position he had occupied in regard to this matter, and which he had occupied ever since the controversy started. (General cheers.) Members had read the correspondence as printed by order of the Legislative Council, and they would find, on perusing it, that the first occasion on which this matter was brought under his notice was as early as October 10, 1896. He received all the correspondence to September—up to date—in order that he might give instructions for a primary lease to be prepared before the plan could be issued showing the route of the railway—that was the only purpose for which the correspondence was sent to him. As far as he knew, as that correspondence disclosed, and so far as the fullest of his recollection went, he heard nothing more. The correspondence was sent to him only for the purpose he had mentioned. He then dealt simply with the question put before him, and the instructions supplied to him. The opinion he thereupon gave was that the primary lease could not be prepared without a plan. (Opposition cheers.) He discharged his duty, answering all the questions put to him up to that point in the matter. The proposal to construct the line from Rosebery to Lyell instead of the original mentioned terminus at Zeehan had never been mentioned to him: he had never had the plan put before him to show either the length or the direction of the extension from Rosebery to Lyell. He had never been asked whether such a line was a branch line within the meaning of the Act or not. The next time the correspondence was sent to him it was to endeavour to find some way of preparing a lease of the branch line before the primary lease was issued, because the plan for the original route had still not been prepared, and he immediately advised that no lease for any branch line could possibly be given before the primary lease had been issued—(Opposition and cross bench cheers)—because the Act expressly said that a lease for a branch line could only be for the unexpired residue of the agreement for the lease of the line—(Opposition cheers)—and there could be no residue of an agreement that was not defined nor mentioned in the lease. (Opposition and cross bench cheers.) He was not, he repeated, put in possession of any information as to the length of the line or the direction it was to take, or as to the correspondence or negotiations with regard to it. Nor was he asked for concurrence or advice in the matter until the company had issued their plan and prospectus. The plan, of course, at once spoke to him much more immediately

and emphatically then any description in words could do. (Hear, hear.) He saw at a glance that the route on the Emu Bay Co.'s plan could not by any stretch of language or definition be called a "branch line" within the meaning of the Waratah and Zeehan Railway Act. (Loud Opposition cheers.) Mr. Smith had remarked that he, as Attorney-General, had never protested against the issue of the lease until he gave his opinion on the words "branch line" to the deputation who waited upon the Ministers; but he hoped he had now explained why he did not protest. He never had been asked the question, nor consulted; it had never been hinted to him directly, nor indirectly, as to what kind of line the company proposed to build, nor as to its length or direction. He was never asked whether, in proceeding to Lyell, they would be making a branch line or otherwise. He had not the slightest doubt that some people might be inclined to think that he only arrived at his opinion with regard to the words "branch line" after the agitation in Hobart on behalf of the Great Western Railway, and until the deputation had waited on Ministers; but there were gentlemen in the city who were prepared to come forward if called upon to prove that he gave his opinion in the same terms as he had since, before that deputation waited on the Ministers. He had never been asked by his colleagues yet to put on paper his reasons for his opinion; but he had his reasons written out, covering six foolscap sheets of paper, which were available for the perusal of the House whenever members desired. (Cheers.) Now the amendment moved by Captain Miles proposed that Ministers should not take further steps in this matter until they were assured by the law officers of the Crown that they were acting in conformity with the law. But to that the Premier in what he has said had indicated that he did not want that advice, and so the House saw the difficulty that the Premier had placed him in. (Opposition cheers.) The Premier was not prepared to take his opinion as to what the law was, and what interpretation the Ministry should put on the Act of Parliament. What was the objection to the amendment? He was only asked that the Cabinet should lay the question before the law officers of the Crown for their advice. If the Premier was not prepared to accept that amendment, all he (the Attorney-General) could say was that the Premier would have to find another adviser who would advise him in a manner more conformable with his wishes than he could. (Loud Opposition and cross bench cheers.)

The Treasurer (Sir Philip Fysh) supposed it had occurred to all of them that after a great many years of association of the most friendly character, years in which there had been no difference between colleagues, a time might come when differences of opinion might arise of so great a character as to involve the question of honourable conduct, and upon which all of them were not agreed; and that such men when they did so differ must separate. He was taken by surprise that that evening they were precipitated by the expressions of a man who had been associated with some of his present colleagues for three and a half years. With him (Sir Philip) his esteemed colleague who had just resumed his seat had been associated for nine years altogether -

Mr. W.H.T. Brown: I said you would live to curse that railway.

The Treasurer felt that no doubt the Attorney-General had spoken from a depth of feeling and conviction.

Mr. Henry: And self-respect. (Opposition cheers.)

The Treasurer: "And self-respect" if you are pleased to add those words. But perhaps members would bear with him whilst he offered a few reasons why he (the Treasurer) could not accept the amendment which had been offered to the House by his

valued friend Captain Miles. They had been told - he meant to say for himself—that certain Ministers, four of them at any rate, were pledged on points of honour to do their best to carry out a promise—made wrongly if the House pleased, but—made, and upon which they must stand. And yet they were asked to accept an amendment which reversed the position, and to seek the opinion of the law officers of the Crown upon a point upon which they already knew what was their opinion, and which was that Ministers had done wrongly. How could Ministers face their constituents and the public generally if they accepted an amendment of that nature? He had lived long enough in public life to know that those guided by the circumstances of the hour had too often cause to regret afterwards the position they had taken up. The circumstances of the hour would induce him to lean towards his esteemed colleague the Attorney-General, if it was only a personal matter. They had differed on many occasions on matters of policy, but believing that they were all acting in the best interests of the community, had modified each others' opinions. Even in such an important matter as the income tax that had been so; but this was a matter which went further than that, effecting the honour and credit of the colony. He was not at all surprised that after what the Attorney-General had said they should separate. He not only esteemed the Attorney-General for the opinion that he held, but yet the hon. member might be wrong. No one could do other than esteem him for his legal acumen, and the Attorney-General knew how his opinion had often been deferred to. The diverse opinions they had heard in the Chamber that night showed how difficult it was to describe a branch line of railway, so it was not strange that Ministers should have taken such means to satisfy themselves that their action was in accordance with the law.

The Attorney-General: Do you expect me to stop with you?

The Treasurer said if he had found himself in opposition with the Ministry he did not think that he would have taken the course that the Attorney-General had taken. He would have tried to yield that opinion to a large extent in order that the business of the country might be carried on.

Mr. Henry: What, after the Premier said he would not trust you?

The Treasurer: The Premier never said anything of the kind. He regretted to find words not used for any such purpose distorted. Those words were being twisted and distorted by hon. members opposite, and made to indicate what they did not convey. It was not a question of advice, but was there any man in that House who, on a matter like that would be satisfied with one man's opinion? Was there any hon. member there who, in connection with his own private affairs, would not have obtained other advice. He had heard it said that it was a matter that could not be settled by Parliament, but by the Supreme Court. Therefore, he thought they were justified in looking to the best opinion they could obtain, which would have been associated with the Attorney-General, for the purpose of learning what was right. It appeared a serious point to him that a Ministry, having taken a certain course, to which they adhered, and having put their names to a solemn promise—that it was their duty to support the promise in every way, and give to that railway company what it was that they were entitled to. Until it was proved to them that they had done wrong they were not entitled to fall back upon an opinion that they had known for some time—a view that was adverse to the opinion that they had expressed. They could not be facing both ways, to profess to the public that they wanted to get out of the difficulty when it was known they could get out of the difficulty at any moment by yielding to the opinion of one man. He could not be party to yielding to the



opinion of one man, even that of his esteemed colleagues with whom he had been so long associated. It was a matter to him of great importance that he had to separate from a man who had been his friend. He did not care for his position in the House, nor the position of a Minister, but when he had a friend he liked to hold to him, and when he had constituents about Hobart who for 20 years had clung to him and were now against him, he felt that he would rather have retired, rather have left, than have parted with a friend. (Hear, hear.)

Mr. Woollnough said if any proof was needed of the ill-advised action of the Government and the concession which they had promised, that information had been supplied in the last few minutes. He hardly knew if he would be justified in dealing with the proper subject matter before the House, and would move the adjournment of the debate.

Captain Evans supported the motion for an adjournment.

The Premier said he did not think it would be wise to adjourn that debate at that early hour; still it was for hon. members to say if they wished it adjourned.

Mr. Burke said he hoped the debate would not be adjourned. He could not see the necessity for an adjournment at that hour.

Mr. Bird supported the motion for the adjournment. He had risen to speak just before the Premier made his statement which had plunged them into such a crisis. That statement had forced the Attorney-General to sever his connection with the Ministry. They believed that as a matter of self-respect nothing else could have been done by the Attorney-General. After what had transpired they were hardly in mind to discuss the question.

The debate was adjourned and made a first Order of the Day for Thursday.

Source: The Mercury, 21 October 1897.